

Understanding PROBATE

Everyone has a will or plan, either created or by default. Even if you have not made out a will or a trust, you still have a plan – a plan dictated by the laws of the state where you reside upon your death. Making a will is not a way to avoid “probate,” the court procedure that dictates the legal ownership of your property after your death. The Probate Court assures it is your last valid will, appoints the executor named in your will, and supervises the executor’s work. Today, there are several things that can help your executor and family later, hopefully much later on.

I am in possession of a will that distributes the decedent’s estate to me. Isn’t this all I need?

No. The will must be admitted to probate and the estate of the decedent must be “probated.”

What does “probate” actually mean?

Generally, “probate” is a court proceeding that administers the estate of a deceased individual.

What is the purpose of “estate administration”?

Typically, there are five purposes, many of which have subsets to them:

1. Determine that the individual decedent is in fact deceased
2. Establish the validity of the will
3. Identify the heirs and devisees of the decedent
4. Settle any claims that creditors may have against the estate of the decedent
5. Distribute the property

Who is the “public administrator”?

A “public administrator” is a person or entity selected by the state to act when there is no will or relatives.

What is the difference between “testate” and “intestate”?

When one is said to have died “testate,” it means he or she died leaving a will. If one is said to have died “intestate,” it means he or she died without a will.

What is the difference between an “executor” and an “administrator”?

An “executor” carries out the directions and requests set forth in the decedent’s will.

An “administrator” is appointed by the court to manage the estate of a decedent who dies intestate.

What are the usual steps to a “normal uncontested probate”?

1. Death of the decedent
2. Will is delivered to the executor or Court Clerk
3. A petition is filed for the Probate of Will or Letters of Administration
4. A hearing is held on the petition
5. Letters of Administration or Letters Testamentary are issued by the court
6. Notice to creditors is given
7. Inventory and appraisement of the estate is made by an independent probate appraiser
8. Federal estate tax return is filed, the return states “no tax due” or specifies an amount due
9. Final accounting and petition for distribution
10. Final decree of distribution
11. Discharge of personal representative

While real property is “in probate,” can it be sold?

Yes. Without getting into too much detail, it can be sold either at private sale, in which the executor of the estate negotiates a transaction with a buyer, or at public sale in which the property is sold at public auction.

If there is no will, how is the property of the estate distributed?

Sections 6400 through 6414 of the California Probate Code address intestate succession and the distributions. The method and manner of intestate distributions is quite complex and therefore one should specifically discuss intestate distributions with his or her legal advisor.